

(b) The applicant must further meet the additional eligibility requirements for each of the specific programs of assistance or services as set forth in §§ 20.21 through 20.24 in order to be eligible for assistance or services under that program.

(c) Upon written request of an appropriate tribal governing body or the appropriate Bureau line official, the Deputy Assistant Secretary may authorize emergency short-term assistance and services to Indians, not otherwise eligible under this part, who reside on a reservation or in designated near-reservation areas, when necessary to meet need as defined at § 20.21(s) and prevent hardship caused by fire, flood or acts of nature.

[42 FR 6568, Feb. 2, 1977, as amended at 50 FR 12529, Mar. 29, 1985; 50 FR 39928, Sept. 30, 1985]

**§ 20.21 General assistance.**

In States where BIA general assistance would otherwise be available, the Bureau will not provide general assistance:

(a) To on or near-reservation members of tribes currently not served by BIA general assistance unless the tribe formally requests, through final governing body action, that the Bureau operate a general assistance program. Such request for BIA general assistance should be timed with the Bureau's next fiscal year for the general assistance program;

(b) In any State having a general assistance program available to meet the needs of eligible citizens, including the needs of Indians. A State general assistance program is available if payments are:

(1) Available statewide to eligible individuals and families, including Indians on reservations;

(2) Authorized by State law with funds regularly appropriated to make such payments, or if State law requires all county governments or localities to make such payments even though payments may fluctuate subject to the limited availability of funds;

(3) For the purpose of meeting monthly minimum essential needs on a continuing basis; and,

(4) Where the Bureau provides general assistance on a reservation in one State and that reservation extends into

a bordering State(s), the Bureau will provide general assistance to members of the tribe in the other bordering State(s) based on the standard of assistance in the State where the recipient or applicant resides. However, the Bureau will provide such assistance in the bordering State(s) only to those members who are not eligible for State general assistance as defined in § 20.21.

(c) In States where the Bureau provides general assistance, Indians, in order to be considered eligible for general assistance under this part, must meet the requirements prescribed in § 20.20(a); and the following conditions:

(1) Must not receive financial assistance from AFDC or Supplemental Security Income (SSI);

(i) Indians eligible to receive AFDC or SSI will be allowed to receive BIA general assistance once they have applied for and until they begin to receive assistance payments from AFDC or SSI, except that payment shall be authorized when good cause reasons, such as physical isolation, lack of transportation or intermittent availability of State eligibility specialists, temporarily prevent concurrent application; and when it can be documented that the application process has been initiated by scheduling an appointment, or that the BIA/tribal caseworker has initiated the application process on behalf of the general assistance applicant.

(ii) The Bureau will not make payments for any month for which AFDC or SSI payments are made.

(2) Must have insufficient resources to meet the basic and special need items defined by the Bureau standard of assistance;

(3) Must apply for assistance from other Federal, State, county, or local programs for which they may be eligible concurrent with application to the Bureau for general assistance, unless good cause reasons, such as physical isolation with sporadic access to transportation or intermittent availability of State eligibility specialists, temporarily prevent concurrent application; and when it can be documented that the application process has been initiated by scheduling an appointment, or

that the BIA/tribal caseworker has initiated the application process on behalf of the general assistance applicant.

(d) *Redeterminations.* (1) The Bureau shall determine eligibility and the amount of the BIA general assistance payment based on its best estimate of income and circumstances which will exist in the month for which the Bureau is to provide assistance. Recipients are required to immediately inform the Bureau of any changes in status which may affect their eligibility or amount of assistance. The Bureau shall redetermine eligibility:

(i) Whenever there is an indication of a change in circumstances;

(ii) Not less frequently than every three (3) months for individuals who are not exempt under paragraph 20.21(i) from seeking or accepting employment;

(iii) Not less frequently than one every six (6) months for all households.

(2) The redetermination process shall include personal contact with the recipient, preferably a home visit, not less than once a year to evaluate changes in living circumstances and household composition, and to assess the need for continued assistance.

(e) *Standards of assistance.* (1) Where the Bureau operates a general assistance program, its standard of assistance shall be the AFDC payment standard used in the State where the applicant or recipient resides. In a State that meets 100 percent of the need standard, the Bureau standard is the need standard. In a State that does not meet need in full and applies a rateable reduction to the need standard, the Bureau standard is the rateable reduced amount. The AFDC payment standard incorporates the same basic and special need items as the AFDC standard of assistance, and is the amount from which the Bureau will subtract net income and liquid assets to determine eligibility for and the amount of the Bureau's general assistance payment.

(2) In the event the State has no standard for one adult, the Bureau standard for one adult shall be the difference between the standard for one child and the standard for a household of two which includes an adult, or one-half the amount of the standard for a household of two, whichever is greater.

(f) *Resources.* In determining eligibility for and the amount of the general assistance payment, the Bureau shall consider all types of income and other liquid assets available for support and maintenance unless otherwise disregarded under § 20.21(g), or specifically excluded by Federal statute. All earned or unearned income will be counted as income in the month received and as a liquid asset thereafter, except certain income from the sale of real personal property as provided for under § 20.21(f)(2)(i). Resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum, as defined at 25 CFR 20.1(w), and has the ability to make such sum available for support and maintenance.

(1) *Earned income* means in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee.

(i) Earned income includes earnings over a period of time for which settlement is made at one given time, as in the instance of the sale of farm crops, livestock, etc.

(ii) With respect to self-employment, *earned income* means total profit from business enterprise, i.e., gross receipts after subtracting business expenses directly related to producing the goods or services and without which the goods or services could not be produced. Business expenses do not include items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal on loans for capital assets or durable goods.

(2) *Unearned income* includes but is not limited to:

(i) Income from: Interest; oil and gas and other mineral royalties; rental property; cash contributions such as child support and alimony; retirement, disability and unemployment benefits; per capita payments not excluded by Federal statute; sale of trust land and real or personal property which is not

set aside for the purpose of reinvestment in trust land or a primary residence, or if set aside, has not been reinvested in trust land or a primary residence at the end of one year from the date the income was received; Federal and State tax refunds. All of the above shall be counted to the extent they are not disregarded by Federal statute.

(ii) Income in kind contributions providing shelter at no cost to the individual or household: In establishing the amount of the in kind contribution, the Bureau shall use the amount for shelter included in the standard, if identifiable, or 25 percent of the standard unless there is evidence provided that the value of free shelter is less; and,

(iii) Assistance provided by a State, county or local agency.

(3) The Bureau shall prorate (i): Over a 12-month period recurring annual income received by individuals, such as teachers whose regular employment does not engage them on a year round basis; (ii) income received by individuals employed on a contractual basis over the period of the contract; and (iii) intermittent income received quarterly, semiannually or yearly over the period covered by the income. The Bureau shall prorate the income unless there is evidence that the income will not continue to be received in the future. *However*, for a period of three years from the publication date of these regulations, the Bureau will not prorate lease income which has been obligated by a household in a manner which makes it unavailable in consumable form to the household.

(g) *Disregards*. (1) The Bureau shall disregard, from the gross amount of earned income, amounts deducted for:

- (i) Federal, State and local taxes;
- (ii) Social Security (FICA);
- (iii) Health insurance;
- (iv) Work related expenses, including reasonable transportation costs;
- (v) Child care costs except where the other parent in the home is not working or is not disabled; and
- (vi) The cost of special clothing, tools and equipment directly related to the individual's employment. All of the above, as appropriate, will be disregarded from self-employment income after deducting costs of doing business.

(2) The Bureau shall disregard as income, or other liquid assets:

(i) The first \$1000 of liquid resources available to the household;

(ii) Any home produce from garden, livestock and poultry utilized by the applicant or recipient and his/her household for their consumption;

(iii) Resources specifically excluded by Federal statute.

(h) *Payments*. (1) The Bureau shall make assistance payments in an amount not to exceed the difference between the Bureau standard of assistance and all resources not otherwise disregarded. In the event the State in which the individual or household lives applies a rateable reduction to that difference or maintains a system of dollar maximums on the payment, the Bureau shall also apply the rateable reduction and/or the maximum to the payment.

(2) If there is more than one household living in a dwelling and the household(s) receiving general assistance contribute to shelter expenses, the Bureau shall prorate the actual shelter cost, but the amount in the payment for shelter will not exceed the amount in the Bureau standard of assistance for shelter, or if not identifiable, the prorated amount, in addition to other needs, cannot exceed the total amount in the standard for individuals or households in similar circumstances.

(3) The Bureau will round the payment down to the next lower whole dollar.

(4) In no case shall the Bureau provide retroactive payments of general assistance for any period prior to the date of application for assistance.

(i) *Employment*. (1) An applicant or recipient must actively seek employment, including use of available tribally or Bureau-funded employment assistance services. The individual is also required to accept available local employment. An individual who does not comply will not be eligible for general assistance. These requirements do not apply to:

- (i) A person under the age of 16 years;
- (ii) A full-time student under the age of 19 who is attending an elementary or secondary school, or a vocational or technical school equivalent to a secondary school;

(iii) A person suffering from an illness, when it is determined on medical evidence or on other sound basis that the individual's illness or injury is serious enough to temporarily prevent entry into employment;

(iv) An incapacitated person, when verified that a physical or mental impairment determined by a physician or licensed or certified psychologist, by itself or in conjunction with age, prevents the individual from engaging in employment;

(v) A person who, upon the documented assessment of the social services caseworker, and pending examination by a physician or other appropriate professional, is deemed essentially incapacitated because of age, physical or mental impairment;

(vi) An individual responsible for a person in the home who has a verified physical or mental impairment that requires the individual in the home on a virtually continuous basis, and there is no other appropriate household member available;

(vii) A parent or other individual who personally provides full-time care of a child under that age of 6;

(viii) A parent or minor living in the household if the other parent is not exempt from seeking or accepting employment;

(ix) A person who is working 30 hours or more per week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days; and

(x) A person for whom employment is not accessible in a commuting time that is reasonable and comparable with others in similar circumstances.

(2) Where the tribe administers a Tribal Work Experience Program (TWEP), the nonexempt individual shall be available to participate. However, participation does not relieve the individual from seeking or accepting employment.

(3) Individuals not exempt under one of the preceding clauses of this section must, in seeking employment, provide evidence of efforts to obtain employment.

(4) Individuals not exempt under one of the preceding clauses of this section,

who refuse, or otherwise fail to seek and accept available local employment, or who voluntarily and without good cause do not maintain their employed status, will not be eligible to receive general assistance for a period of 60 days following the date of application, or eligibility redetermination.

(i) The 60-day period of ineligibility will be renewed upon each application for general assistance until the applicant complies with the requirement to seek and accept available local employment.

(ii) An unemployed individual against whom a 60-day eligibility suspension has been levied will have the suspension period reduced by 30 days upon providing evidence that he/she has made effort to seek employment.

(iii) Periods of eligibility suspension shall affect only the individual who fails to comply with the provision of this section, but shall not apply to other members of his/her household.

[50 FR 39928, Sept. 30, 1985]

#### § 20.22 Child welfare assistance.

An Indian child meeting the requirements prescribed in § 20.20(a) shall be considered eligible for child welfare assistance or services under this part. *Provided, That:*

(a) The child's legally responsible parent, guardian, or Indian court having jurisdiction:

(1) Requests such assistance in writing and is unable to provide necessary care and guidance for the child in his own home for other than financial reasons and is unable to meet the cost of foster care.

(2) Requests such assistance in writing and is unable to provide for the child's special needs which cannot be through other assistance programs including the Bureau's general assistance program.

(b) The child is not receiving and is not eligible to receive public assistance or Supplemental Security Income payments and is not included in such payments made to others. However, an otherwise eligible child may receive child welfare assistance under this part upon application for and pending initial receipt of public assistance or Supplemental Security Income payments